

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FaceTec, Inc.,  
Plaintiff,  
vs.  
iProov, Ltd.,  
Defendant.

Case No. 2:21-CV-02252-ART-BNW

ORDER DENYING PLAINTIFF'S  
OBJECTION TO MAGISTRATE  
JUDGE ORDER AND MOTION FOR  
STAY (ECF Nos. 143, 158)

iProov, Ltd.,  
Counter-Claimant,  
vs.  
FaceTec, Inc.,  
Counter-Defendant.

Before the Court is Plaintiff FaceTec, Inc.'s objection (ECF No. 143) to Magistrate Judge Weksler's order (ECF No. 141) granting in part Defendant iProov's motion to compel (ECF No. 117). For the reasons outlined below, the Court OVERRULES Defendant's objections.

**I. Standard of Review**

Magistrate judges are authorized to resolve pretrial matters subject to district court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a); LR IB 3-1(a). A district court will thus defer to a magistrate judge's nondispositive order unless it is clearly erroneous or contrary to law. *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991). "A finding is clearly erroneous when although there is evidence to support it, the reviewing body on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *24-7 Grp. of Companies, Inc. v. Roberts*, No. 3:13-CV-00211-MMD-WGC, 2014 WL 12707232,

1 at \*2 (D. Nev. Nov. 21, 2014); (quoting *United States v. Ressam*, 593 F.3d 1095,  
2 1118 (9th Cir. 2010)). “A decision is ‘contrary to law’ if it applies an incorrect legal  
3 standard or fails to consider an element of the applicable standard.” *Id.* (quoting  
4 *Conant v. McCoffey*, C97–0139, 1998 WL 164946, at \*2 (N.D.Cal. Mar.16, 1998)).

## 5 **II. Analysis**

6 Plaintiff FaceTec brings claims for patent infringement, breach of contract,  
7 and intentional interference with contract against Defendant iProov. Relevant to  
8 the instant motion, iProov sought revenue and transaction information related to  
9 FaceTec’s accused products through an interrogatory served on FaceTec.  
10 (Interrogatory No. 16, ECF No. 117-2). FaceTec responded, however, iProov  
11 argues that the responses are deficient and filed a motion to compel FaceTec to  
12 supplement its response to include revenues for the entirety of the accused  
13 FaceTec product (as opposed to revenues only for the Liveness & ID scan feature).  
14 (ECF No. 117.)<sup>1</sup>

15 Magistrate Judge Weksler issued an order compelling FaceTec to  
16 supplement its responses to include revenue related to the accused FaceTec  
17 product, not just the Liveness & ID scan feature. Judge Weksler also found that  
18 FaceTec had not met its burden of showing why the information sought is not  
19 relevant or otherwise outside of the scope of discovery and noted that iProov had  
20 cited case law which suggests that this information is in fact relevant. FaceTec  
21 objected to Judge Weksler’s order, arguing that the order erred in requiring  
22 production of revenue information for non-infringing features of FaceTec’s  
23 product.

24 The Court agrees with Judge Weksler that FaceTec failed to meet its burden  
25 of showing that this discovery is not relevant. “Parties may obtain discovery  
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27 <sup>1</sup> Because iProov does not object to the other aspects of Judge Weksler’s order on  
28 the motion to compel, the Court does not discuss the facts or analysis of those  
issues here.

1 regarding any nonprivileged matter that is relevant to any party's claim or defense  
2 and proportional to the needs of the case. . ." Fed. R. Civ. P. 26(b)(1). The party  
3 resisting discovery has the heavy burden to show why discovery is not relevant.  
4 *See Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). As Judge  
5 Weksler noted, FaceTec's opposition to the motion to compel did not put forth  
6 any real argument as to why the information sought is not relevant. Rather,  
7 FaceTec argued that the motion to compel seeks revenue information for  
8 admittedly non-infringing features of FaceTec's products and that it is suspicious  
9 of iProov's motivations. This brief argument did not suffice to show that the  
10 information sought is not relevant or otherwise outside of the scope of discovery.  
11 iProov's motion to compel cited two cases that suggest that revenue information  
12 for non-accused products is discoverable. *Positive Techs., Inc. v. Sony Elecs., Inc.*,  
13 2013 WL 707914 (N.D. Cal. Feb. 26, 2013); *see also Georgia Pac. Corp. v. U.S.*  
14 *Plywood Corp.*, 318 F. Supp. 1116 (S.D.N.Y. 1970), *modified sub nom. Georgia-*  
15 *Pac. Corp. v. U.S. Plywood-Champion Papers, Inc.*, 446 F.2d 295 (2d Cir. 1971).  
16 FaceTec's opposition to the motion to compel presented no analysis as to why  
17 these cases do not apply here.

### 18 **III. Conclusion**

19 It is therefore ordered that Plaintiff FaceTec's objection to Magistrate Judge  
20 Weksler's order (ECF No. 143) is OVERRULED.

21 It is further ordered that Plaintiff FaceTec's motion to stay responses to  
22 Interrogatory 16 pending a ruling on its objection (ECF No. 158) is DENIED AS  
23 MOOT.

24 Dated this 12<sup>th</sup> day of March 2025.

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27 ANNE R. TRAUM  
28 UNITED STATES DISTRICT JUDGE